

December 27, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *IB Docket No. 01-185; ET Docket No. 00-258; Constellation Communications Holdings, Inc., File Nos. 181-SAT-LOA-97(46), IBFS Nos. SAT-LOA-19970926-00148, SAT-AMD-19991230-00134, SAT-AMD-20001103-00152, SAT-MOD-20020719-00103, SAT-T/C-20020718-00114; Mobile Communications Holdings, Inc., File Nos. 180-SAT-P/LA-97(26), SAT-MOD-20020719-00105, SAT-T/C-20020719-00104*

Dear Ms. Dortch:

On behalf of AT&T Wireless Services, Inc., Cingular Wireless LLC, and Verizon Wireless (jointly, the "Carriers"), we hereby submit the following response to the *ex parte* letters filed by ICO Global Communications (Holdings) Ltd. ("ICO") on December 18, 2002 and December 20, 2002 in its attempt to defend the milestone compliance of Mobile Communications Holdings, Inc. ("MCHI") and Constellation Communications Holdings, Inc. ("Constellation"). ICO included several charts attempting to distinguish cases in which the Commission found that sharing arrangements did not meet milestone requirements, and attempting to paint the current arrangements with ICO as consistent with the non-contingent satellite manufacturing contract milestone. ICO seriously mischaracterizes the case law. It misstates or ignores the fundamental findings in the cited precedent: while the Commission has permitted satellite sharing arrangements, it expressly rejects proposals to use sharing arrangements to satisfy milestone compliance. The Carriers provide the following responsive charts to allow the Commission to base its decision on a complete and accurate record.

Furthermore, we note that it is ICO defending the milestone compliance of MCHI and Constellation. ICO is the "real-party-in-interest" here, as the company argues in favor of other MSS providers' milestone compliance solely to preserve those licenses as it awaits Commission action on the applications to transfer those licenses to ICO. The purported sharing arrangements

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are a “paper bridge” as MCHI and Constellation have informed the Commission that the sharing arrangements will terminate if the Commission allows them to sell their licenses to ICO. Thus, before the Commission even reviews ICO’s interpretation of precedent, the Commission must consider ICO’s letters in the context of the proposed sale of the MCHI and Constellation licenses/spectrum to ICO. The Commission must not turn a blind eye towards the realities of this situation.

ICO, moreover, ignores the critical importance the Commission placed on milestone compliance in the 2 GHz MSS proceeding. In deciding the service rules, the Commission concluded that financial qualifications were not necessary because it would “*impose and strictly enforce milestone requirements [to] ensure timely construction of systems and deployment of service.*”¹ The FCC recognized that strict milestone enforcement would be “especially important” in lieu of “financial qualifications as an entry criterion,”² and specifically anticipated that spectrum would be “returned to the Commission as a result of missed milestones.”³ Indeed, the Commission went so far as to recognize that “there is a *probability*” that 2 GHz MSS spectrum would be returned “as some authorized systems [would] not [be] able to implement service.”⁴ The Commission should reject efforts to use sharing arrangements to avoid milestone enforcement. Such use is wholly inconsistent with the Commission’s clear view that each 2 GHz MSS licensee must individually satisfy the milestone requirements: “our 2 GHz MSS licensing is premised on the construction of eight *separate* systems, and authorizations become null and void if the *particular* system authorized is not constructed.”⁵ As the Carriers have demonstrated previously, and as the charts below reinforce, the Commission should declare the MCHI and Constellation licenses null and void for failure to have met the initial construction milestone. ICO’s attempts to convince the Commission otherwise must be rejected.

¹ *Service Rules for the Mobile Satellite Service in the 2 GHz Band*, IB Docket No. 99-81, *Report and Order*, 15 F.C.C.R. 16127, 16150 (2000) (“2 GHz MSS Order”) (emphasis added).

² *Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, IB Docket No. 99-81, *Notice of Proposed Rulemaking*, 14 F.C.C.R. 4843, 4881 (1999) (“2 GHz MSS NPRM”).

³ *2 GHz MSS Order*, 15 F.C.C.R. at 16150.

⁴ *Id.* at 16139.

⁵ *New Advanced Wireless Services*, ET Docket No. 00-258, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 16 F.C.C.R. 16043, 16058 (2001) (“3G FNPRM”) (emphasis added).

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Pursuant to Section 1.1206(b)(2) of the Commission's rules, one copy of this letter is being filed electronically with respect to the rulemaking dockets, and two paper copies are being filed with the Secretary's office with respect to each application proceeding.

Respectfully submitted,

/s/ Kathryn A. Zachem

Kathryn A. Zachem

L. Andrew Tollin

Enclosures

cc: Bryan Tramont
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**FCC DECISIONS ON SATELLITE SHARING ARRANGEMENTS
DO NOT SUPPORT THE CLAIM THAT SHARING SATISFIES MILESTONES**

Case	FCC Action
<i>Applications of United States Satellite Broadcasting Co. Inc.</i> , 7FCC Rcd 7247 (MMB 1992)	The decision did not involve milestones but rather a modification and extension of time request regarding a DBS “due diligence” showing – a lower standard than the 2 GHz MSS milestone showing. USSB had previously demonstrated that it had entered into a contract for the construction of three satellites, and in this order the FCC allowed USSB to modify one of the three satellites. Moreover, the FCC’s leniency in the case of this DBS licensee ultimately was a failure, because USSB did not construct and launch the other satellites for which it was authorized.
<i>Application of Volunteers in Technical Assistance</i> , 12 FCC Rcd 13995 (1997) (“VITA I”)	The decision did not involve milestones. The case involved a licensee, VITA, that is a non-profit humanitarian aid organization committed to providing educational, health, environmental, and disaster relief communications in developing countries. The decision favorably resolved <i>de facto</i> control claims based on the unique facts of the case. (VITA was required to devote at least 50 percent of its satellite capacity for its non-commercial humanitarian purposes, among other things.) In addition, this satellite was never constructed.
<i>Application of Volunteers in Technical Assistance</i> , 12 FCC Rcd 3094 (IB 1997) (“VITA II”)	The decision concluded that, after the launch of VITA’s first satellite failed, a milestone extension was warranted due to circumstances beyond VITA’s control. The decision also resolved similar <i>de facto</i> control claims in VITA’s favor. It denied, however, VITA’s application to construct, launch and operate a second satellite on financial qualification grounds. In addition, this satellite was never constructed.
<i>Application of AMSC Subsidiary Corp.</i> , 13 FCC Rcd 12316 (IB 1998)	The decision did not involve milestones. After successfully constructing and launching its satellite and providing service for two years, AMSC was granted authority to change its space station and operate on a new facility jointly with another provider.
<i>Columbia Communications Corp.</i> , 7 FCC Rcd 122 (1991) (“Columbia Authorization Order”)	The decision did not involve milestones. Rather, the Commission granted Columbia the authority to use transponders located on a NASA satellite system, which was already operational. (Columbia was required to demonstrate its financial qualifications to obtain the authorization.)
<i>Columbia Communications Corp.</i> , 16 FCC Rcd 10867 (IB 2001) (“Columbia Reconsideration Order”)	The International Bureau reaffirmed that Columbia’s interim authority to use capacity on a NASA system was conditioned upon the timely construction of its own system in accordance with its milestone obligations.

Case	FCC Action
<i>GTE Spacenet Corp.</i> , 2 FCC Rcd 5312 (CCB 1987)	The decision demonstrates that acquiring capacity on another's satellite system does not satisfy a licensee's milestone requirements. The decision rejected Geostar's request that its authority to operate on the GTE Spacenet system should satisfy the milestone requirements imposed on the first satellite in its own system. The decision concluded that Geostar's milestone requirements remained in effect and its authorization would become null and void unless it obtained a waiver for good cause shown. In addition, Geostar never did construct any satellites.
<i>Dominion Video Satellite, Inc.</i> , 14 FCC Rcd 8182 (IB 1999)	The decision concluded that sharing would not satisfy the DBS due diligence construction obligations. It found that "[n]othing in the Commission's rules . . . suggests that leasing capacity on another space station licensed to another DBS operator satisfies the due diligence requirement" to construct a satellite. Under the more lenient DBS standards, however, the Commission granted a waiver of the milestones. Dominion never has constructed any satellites.

FCC SATELLITE SHARING CASES DO NOT SUPPORT A FINDING OF MCHI/CONSTELLATION MILESTONE COMPLIANCE

The two situations ICO relies upon to support its claim that the FCC allows sharing of a satellite platform to meet milestone compliance are readily distinguishable from the MCHI/Constellation case, in which the companies have made no progress towards construction of their proposed (and licensed) satellite systems. Instead, they are merely relying on the sharing agreements with ICO as a means of keeping their licenses valid so they can be sold to ICO.

Case	Response to ICO’s Attempts to Rely on These Cases
<i>Applications of United States Satellite Broadcasting Co. Inc.</i> , 7 FCC Rcd 7247 (MMB 1992)	<p>This decision does not involve the same milestone compliance standards, because it arose under the more lenient “totality of the circumstances” standards applied initially to DBS, as opposed to the “strict enforcement” standard explicitly imposed on 2 GHz MSS licensees (because of the absence of financial qualifications).</p> <p>This decision did not involve the determination of whether USSB had satisfied the “first due diligence milestone” – the Commission earlier found that USSB had satisfied that requirement when it signed a contract for the construction of three satellites (<i>USSB</i>, 5 FCC Rcd. 7576 (1990)). The decision cited by ICO involved a modification of the license with respect to only one of the three authorized satellites to permit sharing of the satellite platform. In that decision, the FCC also relied on the substantial progress made by USSB in system implementation (such as contracts for user terminals), its signing (and payment for) launch reservations for the remaining satellites, and its 40% payment to Hughes for the shared satellite.</p> <p>In contrast, the only “commitment” MCHI and Constellation have made to deployment of “their” 2 GHz MSS systems is entering a contract to “purchase” channels on the ICO satellite system in an attempt to satisfy their license milestones and entering a contract to sell their licenses to ICO. Further, under the contracts with ICO they have made a down payment (the amount of which was redacted) that is promptly and fully refundable in the event of termination (including termination for not meeting the milestone requirements – paragraphs 7.3.2 and 7.4). Constellation/MCHI are otherwise not committed or bound under the agreements with ICO. Notably, in the agreements, ICO has stated in paragraph 2.8: “nothing contained herein shall be deemed to constitute a representation, warranty or covenant of ICO that [Constellation/MCHI]’s Ownership Interest will satisfy any or all such FCC milestones.”</p>
<i>Application of Volunteers in Technical Assistance</i> , 12 FCC Rcd 3094 (IB 1997) (“ <i>VITA II</i> ”)	<p>This decision did not involve the “strict enforcement” standard explicitly imposed on the 2 GHz MSS licensees (because of the absence of financial qualifications).</p> <p>Of note, this case involved a “non-profit, humanitarian aid organization” proposing to provide “essential educational, health,</p>

Case	Response to ICO's Attempts to Rely on These Cases
	<p>environmental, disaster relief and technical communication services in developing countries.” VITA was originally awarded a license for two satellites through the pioneer’s preference program, and the cited order addressed a replacement satellite because its first attempt at a sharing scenario failed because the satellite exploded upon launch. Moreover, the decision revoked the authorization for VITA’s second satellite because it did not demonstrate that it was financially qualified to construct the satellite.</p>
<p><i>Application of Volunteers in Technical Assistance</i>, 12 FCC Rcd 13995 (1997) (“VITA I”)</p>	<p>This decision did not involve the “strict enforcement” standard explicitly imposed on the 2 GHz MSS licensees (because of the absence of financial qualifications).</p> <p>In affirming the initial VITA license grant, this decision relied upon VITA’s unique status as a “non-profit humanitarian aid organization that provides services to developing nations around the world” and recipient of a pioneer’s preference. The FCC actually observed “we have been responsive to the unique financial position of non-commercial entities and have modified our licensing processes in the past to accommodate non-commercial entities.” (Order at ¶ 24).</p>

FCC CASES REJECTING MILESTONE COMPLIANCE ARE NOT DISTINGUISHABLE

The Commission should also reject ICO’s attempts to distinguish its sharing agreements with MCHI and Constellation from other precedent in which the FCC rejected sharing as a means of satisfying satellite construction milestones. These efforts are unavailing, because those cases establish the principle that a licensee cannot rely on interim or stopgap measures as a substitute for implementation of the *licensed* satellite system. Moreover, the present situation is even more egregious than those earlier cases, insofar as MCHI and Constellation are not seeking to share a platform with ICO as an interim step towards deployment but intend to abandon their plans and sell their licenses/spectrum to ICO.

Case	Response to ICO’s Attempts to Distinguish
<i>Advanced Communications Corp.</i> , 11 FCC Rcd 3399 (1995)	ICO attempts to distinguish <i>Advanced</i> because it involved a milestone extension. The difference is not significant. Here, MCHI and Constellation have merely “compressed” what took <i>Advanced</i> many years: they seek to substitute a sharing agreement and transfer of control for the ultimate construction of the licensed satellite systems. In that earlier case, <i>Advanced</i> had signed a satellite construction agreement, delayed actual progress, and immediately before the milestone sought to share capacity and assign the license. In this case, Constellation and MCHI seek to skip the initial milestone and use a sharing arrangement as a “paper bridge” to effectuate a transfer of control. As the Commission recognized, the construction progress made by the licensee of the shared satellite system cannot be attributed to the petitioner seeking to demonstrate progress towards construction of its licensed satellite system. (Order at ¶ 41). Finally, <i>Advanced</i> distinguished the <i>USSB</i> case, where USSB made arrangements for sharing of a platform over a year before the milestone deadline. In contrast, MCHI and Constellation (and <i>Advanced</i>) entered into the sharing agreements just before or on the milestone deadlines.
<i>Dominion Video Satellite, Inc.</i> , 14 FCC Rcd 8182 (IB 1999)	This case arose under the more lenient DBS rules. The FCC granted a waiver of the milestones but indicated that the lease of capacity did not satisfy the construction requirement. The fact that MCHI and Constellation are “purchasing” instead of “leasing” the ICO capacity is not significant. Moreover, the “purchase” of capacity is merely a “paper bridge” to facilitate the sale of the spectrum/licenses to ICO.
<i>Columbia Communications Corp.</i> , 16 FCC Rcd 10867 (IB 2001) (<i>Columbia Reconsideration Order</i>)	ICO’s chart mis-cites the case, since presumably they were referring to the Bureau decision below (15 FCC Rcd 15566), which held that use of interim capacity (not compliant with the licensee’s proposed system) was not an adequate basis for tolling construction of the proposed satellite system. Here, the sharing arrangement is not an interim step that will allow implementation of the licensed system. MCHI and Constellation have abandoned any pretext of implementing their systems, and the sharing proposal is meant to serve as a bridge to the sale of the licenses/spectrum. Thus, the fact that ICO’s system is compliant with the 2 GHz MSS rules is irrelevant.

Case	Response to ICO's Attempts to Distinguish
<i>GTE Spacenet Corp.</i> , 2 FCC Rcd 5312 (CCB 1987)	<p>The FCC rejected Geostar's attempts to substitute its use of an admittedly interim system to meet the construction milestone of the proposed, stand-alone RDSS satellite system. One of the factors the FCC relied upon was the deviation in the interim solution from the licensed satellite system. Here, the sharing arrangement is not an interim step that will allow implementation of the licensed system. MCHI and Constellation have abandoned any pretext of implementing their systems, and the sharing proposal is meant to serve as a bridge to the sale of the licenses/spectrum. Thus, the fact that ICO's system is compliant with the 2 GHz MSS rules is irrelevant.</p>

FCC CASES FINDING FAILURE TO MEET NON-CONTINGENT CONTRACT MILESTONE

In its *ex parte* materials, ICO (on behalf of Constellation and MCHI) attempts to differentiate this present situation from earlier cases where the Commission found that a licensee had not complied with the non-contingent contract milestone. ICO's attempts to distinguish those earlier cases are without merit. On their face, the sharing agreements do not satisfy the milestone – a non-contingent *satellite manufacturing contract*. Moreover, their two-step arrangement demonstrates that MCHI and Constellation have abandoned their systems and have no intention to proceed with construction of their systems as required by their licenses.

Case	Response to ICO's Attempts to Distinguish
<i>Constellation Communications Holdings, Inc.</i> , DA 02-3086 (IB rel. Nov. 8, 2002), <i>petition for recon. pending</i> .	<p>FCC cancelled a license where the licensee had contracted for the first two satellites but not the remaining satellites in its system. In doing so, the FCC observed “Milestones are necessary to ensure that licensees are building <i>their</i> systems in a timely manner <i>and that orbital resources and spectrum are not held by licensees unable or unwilling to proceed with their plans.</i>” (Order at ¶ 5, emphasis added).</p> <p>Here, MCHI and Constellation have failed to enter into binding contracts to construct their systems. Instead, they have abandoned construction of their systems and seek to satisfy the milestone through a “paper bridge” to preserve their licenses so as to effectuate their sale to ICO. Moreover, even this “paper bridge” includes conditions (such as FCC approval of the milestones), and the initial payment (the amount of which was redacted) is to be fully refunded if those conditions are not satisfied.</p>
<i>Motorola, Inc. and Teledesic, LLC</i> , 17 FCC Rcd 16543 (IB 2002).	<p>FCC cancels license because there was no satellite construction contract.</p> <p>The sharing agreement with ICO is not different from the absence of a construction contract, because it is merely a “paper bridge” designed to allow sale of their licenses/spectrum to ICO. As the FCC observed in the Motorola/Teledesic order, “Construction commencement milestones are especially important because they provide an initial objective indication as to whether licensees <i>are committed to proceeding with implementation of their proposals.</i>” (Order at ¶ 11, emphasis added). In the case of MCHI and Constellation, the licensees have clearly abandoned any efforts to implement their proposals, opting instead to try to sell their licenses/spectrum to ICO.</p>
<i>Mobile Communications Holdings, Inc.</i> , 17 FCC Rcd 11898 (IB 2002), <i>application for review pending</i> .	<p>FCC cancelled a license where the licensee entered a contract to construct the initial two satellites but had no binding contract for the remaining satellites covered by its license.</p> <p>Here, MCHI and Constellation have failed to enter into binding contracts to construct their systems. Instead, they have abandoned construction of their systems and seek to satisfy the milestone through</p>

Case	Response to ICO's Attempts to Distinguish
	<p>a “paper bridge” to preserve their licenses so as to effectuate their sale to ICO. Moreover, even this “paper bridge” includes conditions (such as FCC approval of the milestones), and the initial payment (the amount of which was redacted) is to be fully refunded if those conditions are not satisfied.</p>
<p><i>Astrolink International LLC</i>, 17 FCC Rcd 11267 (IB 2002).</p>	<p>In <i>Astrolink</i>, the FCC found that it had not met the initial construction milestone because it had terminated the construction contract. However, the FCC believed that a waiver of the milestone (and short extension of time to enter a new contract) was proper because the satellite was more than 90% completed before work was halted, and Astrolink could still meet the construction and launch deadline. As the FCC observed in that decision: “Milestones are necessary to ensure that licensees build <i>their</i> systems in a timely manner <i>and that orbital resources and spectrum are not being held by licensees unable or unwilling to proceed with their plans.</i>” (Order at ¶ 5, emphasis added).</p> <p>In the MCHI/Constellation situation, in contrast, the licensees have admittedly abandoned any plans to construct their systems, and instead have simply submitted the sharing agreement with ICO as a “paper bridge” to allow them to sell their spectrum/licenses to ICO.</p>
<p><i>EchoStar Satellite Corp.</i>, 17 FCC Rcd 12780 (IB 2002), <i>reversed on reconsideration</i>, DA 02-3085 (IB rel. Nov. 18, 2002).</p>	<p>In this case, the FCC initially cancelled the EchoStar Ka-band authorization, because EchoStar had failed to present evidence that it had entered into a binding contract for construction of the Ka-band payload. On reconsideration, the FCC reinstated the license because EchoStar supplemented the record and demonstrated that the payload had actually been substantially constructed.</p> <p>In the MCHI/Constellation situation, in contrast, the licensees have admittedly abandoned any plans to construct their systems, and instead have submitted the sharing agreement with ICO as a “paper bridge” to allow them to sell their spectrum/licenses to ICO.</p>
<p><i>Morning Star Satellite Co., LLC</i>, 16 FCC Rcd 11550 (2001).</p>	<p>In that case, the FCC denied an application for review of a Bureau Order canceling Morning Star’s Ka-band license. The contract submitted by Morning Star was inadequate, because it lacked a construction schedule, payment schedule or binding terms for satellite construction. As the FCC observed: “The milestones are designed to ensure that licensees are building <i>their systems</i> in a timely manner. <i>They also enable the Commission to determine early on if a license is being held by a licensee that is unable or unwilling to proceed with its plans.</i>” (Order at ¶ 7, emphasis added).</p> <p>In the MCHI/Constellation situation, the licensees have admittedly abandoned any plans to construct their systems, and instead have submitted the sharing agreement with ICO as a “paper bridge” to allow them to sell their spectrum/licenses to ICO.</p>

Case	Response to ICO's Attempts to Distinguish
<p><i>PanAmSat Licensee Corp.</i>, 16 FCC Rcd 11534 (2001).</p>	<p>In that case, the FCC denied an application for review of a Bureau Order canceling two of PanAmSat's Ka-band authorizations, because PanAmSat had not executed a construction contract by the deadline (instead filing a modification to add ISL frequencies a mere 10 days before the initial construction milestone). As the FCC observed in that decision: "Commencement of construction is evidence of a licensee's commitment to proceed with its business plans. PanAmSat, on the other hand, has not even entered into a contract to commence construction of its satellites." (Order at p. 9); and, "If a licensee does not even enter into a contract before the milestone to begin construction of <i>its satellite specified in its license</i>, it raises substantial doubts as to whether the licensee intends or is able to proceed with its business plans." (Order at p. 12, emphasis added).</p> <p>In the case of MCHI and Constellation, there is no doubt as to whether Constellation or MCHI intend to proceed with their satellite systems -- they have made clear their intent to abandon their systems, and instead have submitted the sharing agreement with ICO as a "paper bridge" to allow them to sell their spectrum/licenses to ICO.</p>
<p><i>NetSat 28 Co, LLC</i>, 16 FCC Rcd 11025 (IB 2001).</p>	<p>In that case, the FCC initially cancelled the NetSat 28 authorization because it entered into a non-contingent construction contract approximately 18 months after the milestone. The FCC subsequently waived the milestone, reinstated the license and extended the construction and launch deadlines because the Commission had wrongly placed a cloud on the NetSat 28 license, so that equity favored the waiver.</p> <p>The <i>NetSat</i> decision is irrelevant to the MCHI/Constellation licenses, however, because neither MCHI nor Constellation allege that their abandonment of construction of their satellites and sale of their licenses/spectrum to ICO is a result of any wrongful action on the part of the Commission.</p>
<p><i>Norris Satellite Communications, Inc.</i>, 12 FCC Rcd 22299 (1997).</p>	<p>The Commission affirmed the Bureau order canceling Norris' authorization and denying the milestone waiver request. The FCC held that the satellite construction contract was not non-contingent, because its commencement depended upon an up front payment that apparently was not made. Thus, Norris was unable to provide "tangible evidence that implementation is proceeding." (Order at ¶ 9).</p> <p>In the case of MCHI and Constellation, implementation is clearly not proceeding, because the licensees have abandoned their plans to proceed with their systems, choosing instead to sell their licenses/spectrum to ICO. The sharing agreements submitted as proof of milestone compliance are nothing more than a "paper bridge"</p>

Case	Response to ICO's Attempts to Distinguish
	<p>designed to allow the sale to proceed. Moreover, even those sharing agreements are not non-contingent, because they are conditioned on events such as FCC approval of the milestones and the initial payment (the amount of which was redacted) is to be fully refunded if those conditions are not satisfied.</p>
<p><i>TEMPO Enterprises, Inc.</i>, 1 FCC Rcd 20 (1986).</p>	<p>The Commission cancelled the DBS authorization of NexSat because it had failed to enter into a contract for construction of its satellites. The FCC rejected NexSat's request for an extension of time based on regulatory uncertainty.</p> <p>In the case of MCHI and Constellation, the only contract they have submitted is the sharing agreement, which is a "paper bridge" to allow the sale of the spectrum/licenses to ICO. Moreover, even those sharing agreements are not non-contingent, because they are conditioned on events such as FCC approval of the milestones and the initial payment (the amount of which was redacted) is to be fully refunded if those conditions are not satisfied.</p>
<p><i>Applications of CBS, Inc.</i>, 99 FCC 2d 565 (1984).</p>	<p>The FCC found that the construction contract submitted by DBSC was not non-contingent, but allowed a short extension of the milestone because there may have been some ambiguity as to the standards for construction contracts related to DBS satellites.</p> <p>In contrast, the Commission has made very clear in the 2 GHz MSS proceeding that it would "strictly enforce" the milestones.</p>